

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO AB-167-1004

224060

CONRAIL ABANDONMENT OF THE
SNOW SHOE INDUSTRIAL TRACK
IN CENTRE AND CLEARFIELD COUNTIES, PENNSYLVANIA

FINANCE DOCKET NO 35116

224061

R J CORMAN RAILROAD COMPANY/PENNSYLVANIA LINES INC ,
CONSTRUCTION AND OPERATION EXEMPTION
IN CENTRE AND CLEARFIELD COUNTIES, PENNSYLVANIA

FINANCE DOCKET NO 35143

224062

R J CORMAN RAILROAD COMPANY/PENNSYLVANIA LINES INC

ENTERED
Office of Proceedings

ACQUISITION AND OPERATION EXEMPTION
LINE OF NORFOLK SOUTHERN RAILWAY COMPANY

NOV 26 2008

Part of
Public Record

STATEMENT OF HEADWATERS CHARITABLE TRUST

AND NOW, comes Headwaters Charitable Trust ("HCT") by its undersigned counsel,
and submits the following Statement with regard to the pending STB proceedings in the above-
captioned dockets

1 Headwaters Charitable Trust ("HCT") is a 501(c)(3) charitable organization
which acquired title to a 9.3 mile section of the Snow Shoe Trail on September 24, 1993,
pursuant to a notice of interim trail use issued by the Interstate Commerce Commission in a
decision and certificate dated February 15, 1990 and ICC docket no AB-167(sub no 1004N)
and a subsequent ICC decision and notice dated November 2, 1993 at ICC docket no AB-
167(sub no 1004N). Since its acquisition of the said trail (hereinafter, the said 9.3 mile segment
of the Snow Shoe Trail will be referred to as the "Trail"), Headwaters has engaged in significant
maintenance and improvements on the Trail, as more fully set forth hereinafter

2 The Trail is leased by Headwaters to the Snow Shoe Rails to Trails Association ("SSRTA"), a local group having an excess of 1,400 members, which utilizes the Trail for recreational purposes. In addition to utilizing the Trail, SSRTA provides thousands of man hours of labor each year for the maintenance of the Trail.

3 On November 17, 2004, HCT entered into a Letter of Understanding with Resource Recovery, I.L.C. ("RRILLC"). The letter of understanding stated that its purpose was "to confirm the understanding between the parties with respect to the potential future reactivation of the Snow Shoe Industrial Track [the Trail] for rail service to facilities to be located in Rush Township." The second paragraph of the letter of understanding, which both parties executed, stated that RRILLC was offering to acquire the Trail "in accordance with the following commitments to which RRILLC and the Headwaters Charitable Trust have agreed." (A true and correct copy of the November 17, 2004 Letter of Understanding is attached as Exhibit "A" hereto.)

4 The November 17, 2004 Letter of Understanding then proceeded to enumerate seven "commitments," which included, *inter alia*, agreement by HCT to proceed with grant approval and funding for repairs to the Peale Tunnel on the Trail, as well as other trail improvements, to provide RRILLC with allocations of public grant obligations and access to engineering reports on trail improvements, to confer with RRILLC's consulting engineers regarding improvements to be made to the Trail, and, finally, to convey the Trail upon 12 months notice from RRILLC.

5 In consideration of the commitments of HCT, as set forth above, RRILLC agreed, in the Letter of Understanding, to hold HCT harmless from any demands by a government agency or other nonprofit entity, to repay funds expended by HCT allocable to the Trail upon its re-conversion to rail use, and to make HCT whole for all costs incurred by HCT in connection

with its development of the Trail as a recreational facility RRLLC agreed further to provide a bond or letter of credit to secure these undertakings Finally, RRLLC agreed, prior to the conversion of the Trail to railroad use, to provide HCT with an alternative recreational trail

6 The November 17, 2004 Letter of Understanding, between RRLLC and HCT, expressly recognized that said letter would “facilitate the receipt and expenditure of various grants to be used by HCT to repair and improve structures on the Snow Shoe Trail right of way, including the Peale Tunnel ” and concluded by stating that it would provide the basis upon which the parties would enter into specific agreements “to implement the understanding set forth herein ”

7 In reliance upon the agreements of RRLLC set forth in the November 17, 2004 Letter of Understanding, HCT proceeded to apply for, receive, and expend additional grant monies for the repair and improvement of the Trail, including a \$555,195 00 grant for repairs to the Peale Tunnel

8 Subsequently, in or about March 2005, RRLLC provided HCT with a proposed “Cooperation Agreement” which called for RRLLC to make a series of payments to HCT in return for HCT’s agreement, *inter alia*, to “actively support” RRLLC’s proposed landfill through both letters and testimony Negotiations between the parties regarding the draft Cooperation Agreement broke down over the issue of whether HCT, as a 501(c)(3) entity, could actively advocate for a proposed privately-owned landfill (A true and correct copy of RRLLC’s proposed Cooperation Agreement is attached as Exhibit “B” hereto)

9 Meanwhile, on April 18, 2005, RRLLC entered into a Cooperation Agreement with the Moshannon Creek Watershed Coalition (“MCWC”), whereby it agreed to provide significant funding to MCWC “to support MCWC’s mission to improve and protect the quality and beauty of the Moshannon Creek and to enhance life in the Moshannon Creek Watershed ”

(A true and correct copy of the Cooperation Agreement between RRLLC and MCWC is attached as Exhibit "C" hereto

10 By letter dated December 17, 2007, E B Abel, Jr , president of RRLLC, unilaterally declared the November 17, 2004 Letter of Understanding between RRLLC and HCT to be null and void (A true and correct copy of Mr Able's December 17, 2007 letter is attached as Exhibit "D" hereto)

11 The improvements made to the Trail, upon which RRLLC and R J Corman Railroad Company/Pennsylvania Lines Inc currently seek to reactivate rail service, were completed by HCT in reliance upon the promises of RRLLC, as set forth in the November 17, 2004 Letter of Understanding and will greatly benefit R J Corman Railroad Company in reactivation of said line

12 In a September 15, 2008 telephone conference, counsel for HCT suggested to counsel for RRLLC that their respective clients meet face-to-face for the purpose of resolving these differences and negotiating a final agreement as contemplated by the November 17, 2004 Letter of Agreement Counsel for RRLLC agreed to discuss the matter with his client

13 By letter of September 23, 2008 counsel for RRLLC stated that it would be useful to identify the objectives of the various parties in interest prior to scheduling a meeting and proceeded to set forth five Commitments that RRLLC would require from HCT in any agreement regarding the Trail Counsel for RRLLC also noted that R J Corman Railroad Company, applicant in the above-captioned proceeding, would be a required party to any agreement between RRLLC and HCT (A true and correct copy of counsel's letter of September 23, 2008 is attached as Exhibit "E" hereto.)

14 By letter of October 7, 2008, counsel for HCT addressed each of the five concerns outlined in RRLLC's letter and set forth five commitments which HCT would require of RRLLC

in any agreement regarding the Trail. The letter concluded with an invitation to schedule a mutually convenient time and place for the meeting HCT's counsel had proposed previously (A true and correct copy of undersigned counsel's October 7, 2008 letter is attached as Exhibit "F" hereto.)

15 Counsel for RRLLC responded to HCT's October 7, 2008 letter by a telephone call on October 17, 2008, in which he stated that RRLLC and R J Corman Railroad Company wished to postpone any further discussion with HCT pending regulatory approval by this Board of the reactivation of rail service on the Trail.

16 To the extent that RRLLC and R J Corman Railroad Company agree to proceed to negotiate in good faith to reach agreement on the commitments enumerated in HCT's letter of October 7, 2008, including the reimbursement of HCT for improvements to the Trail, which will benefit both RRLLC and R J Corman Railroad Company, and the provision of a substitute recreational trail, HCT will have no objection to the reestablishment of rail service on the Trail.

Respectfully submitted,

THOMSON, RHODES & COWIE, P C

By



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Templeton Smith, Jr.
PA 26489
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Of Counsel to

Vuono & Gray LLC

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Pittsburgh, PA 15219

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(412) 471-4477 FAX

851 Twelfth Street

Oakmont PA 15139

November 17, 2004

Mr Ed Abel
Resource Recovery, LLC
3925 Columbia Avenue
Mountville, PA 17554

Mr Ed Kosa, Chairman
Headwaters Charitable Trust
478 Jeffers Street
DuBois, PA 15801

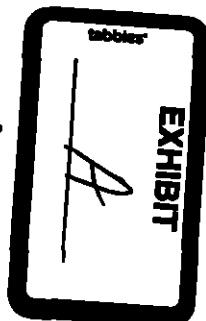
Re Letter of Understanding – Reactivation of the Snow Shoe Industrial Track Right of Way
for Railroad Service

Dear Gentlemen

The purpose of this letter is to confirm the understanding between representatives of Resource Recovery, LLC and the Headwaters Charitable Trust with respect to the potential future reactivation of the former Snow Shoe Industrial Track for rail service to Resource Recovery, LLC facilities to be located in Rush Township. As you are aware, the former Snow Shoe Industrial line was conveyed to Headwaters Charitable Trust by Consolidated Rail Corporation on September 24, 1993 pursuant to a Notice of Interim Trail Use issued by the ICC in a decision and certificate dated February 15, 1990 in ICC Docket No. AB-167 (Sub No. 1004N) and the ICC Decision and Notice dated November 2, 1993 in ICC Docket No. AB-167 (Sub No. 1004N). Under the provisions of 16 U.S.C. §1247(d) the Snow Shoe Industrial line was not abandoned by Consolidated Rail Corporation but under the Notice of Interim Trail Use issued by the ICC was retained as part of a national rail transportation system for use on an interim basis for recreational trail purposes subject to restoration and reconstruction of the line for railroad purposes.

Resource Recovery, LLC has advised Headwaters Charitable Trust that it plans to invoke the rail restoration provisions of §1247(d) and offers to acquire a 9.3 mile section of the Snow Shoe line in accordance with the following commitments to which Resource Recovery, LLC and the Headwaters Charitable Trust have agreed:

1. Headwaters Trust would proceed with its grant approval and funding for the Peale Tunnel repairs and other trail improvements given the fact that conversion of the trail to railroad use is presently projected to occur no earlier than 2008 and under the National Trail Systems Act, the Trust has a legal obligation to maintain right of way structures for interim trail and future rail use.



2 Headwaters Trust will provide Resource Recovery with allocations of public grant obligations, in kind endeavors, and management, development and overhead expenditures for the 9.3 mile segment of the Snow Shoe line from Milepost 64.5 to Milepost 55.2 at Gorton Road. Headwaters Trust will also make available to Resource Recovery all engineering reports on trail improvements and permit Resource Recovery to confer with its consulting engineers regarding improvements to be made to the 9.3 mile segment to ensure that those improvements are consistent with future rail use of that portion of the line.

3 Resource Recovery, LLC will hold Headwaters Trust harmless from any demands by a governmental agency or other nonprofit entity to repay funds expended by Headwaters Trust allocable to the 9.3 mile segment of the Snow Shoe line upon its reconversion to railroad use. Resource Recovery will also make Headwaters Trust whole for all costs incurred by Headwaters Trust in connection with expenditures undertaken in connection with development of the 9.3 mile section of the Snow Shoe line as a recreational trail in the event that Resource Recovery elects to reconvert the 9.3 mile line segment to railroad use.

4 Upon request of Resource Recovery, Headwaters Trust will convey a suitable interest (to be determined at Resource Recovery's sole discretion) in the Snow Shoe line from Milepost 64.5 to Milepost 55.2 at Gorton Road to be reconverted to common carrier rail use upon 12 months prior written notice by Resource Recovery to Headwaters Trust.

5 Prior to conversion of the 9.3 mile line segment to railroad use, Resource Recovery will build and lease to Headwaters Trust for \$1 per year an alternative recreational trail loop to be designed and constructed at Resource Recovery's sole cost on the Resource Recovery site with the advice and assistance of Headwaters Trust. The alternative trail loop will be leased to Headwaters Trust for as long as the Snow Shoe line is used for railroad purposes and Headwaters Trust will be responsible for maintenance and repair of the alternative recreational trail loop as lessee.

6 Upon termination and abandonment of rail service over the Snow Shoe line, Resource Recovery will provide Headwaters Trust the option of deciding whether or not to reacquire title to the railroad right-of-way. Should the Trust decide that it does not wish to reacquire the railroad right-of-way for recreational purposes, Resource Recovery and the Trust would then agree on an arrangement for the Trust to retain use of the loop trail.

7 Resource Recovery will provide Headwaters Trust with a financial guarantee in the form of a bond or letter of credit satisfactory to the Trust which would assure the refund of private or public grant monies if such refunds can be required. The bond or letter of credit would become effective upon the conversion of the right-of-way to railroad purposes evidenced by the issuance of an exemption notice or a certificate of public convenience and necessity issued by the Surface Transportation Board.

Ed Abel
Ed Kosa
Page 3
November 17, 2004

It is the understanding of the Headwaters Trust and Resource Recovery, LLC that these provisions will facilitate the receipt and expenditure of various grants funded through the Pennsylvania Department of Transportation or other agencies which would be used to repair and improve right of way structures, including the Peale Tunnel. These repairs and improvements are necessary in order to make the right of way safe for recreational trail purposes and to ensure its continued preservation and maintenance in accordance with the obligations assumed by the Headwaters Trust under the Notice of Interim Trail Use.

It is the understanding of Resource Recovery, LLC and the Headwaters Charitable Trust that this letter will provide the basis upon which the parties will enter into specific agreements to effectuate the understanding set forth herein. In the meantime, the parties may use this Letter of Understanding to inform governmental agencies, private groups and the public regarding future disposition and use of the Snow Shoe line and the alternative recreational trail facilities that will be made available to Headwaters Charitable Trust in the event the 9.3 mile section of the Snow Shoe line is reconverted to railroad use.

To indicate your agreement with this Letter of Understanding, please execute this letter on the signature lines provided below.

Very truly yours,

RICHARD R. WILSON, P.C.



Richard R. Wilson, Esq.
Attorney for Resource Recovery, LLC

RRW/bab

cc Jake Meyer, Esq.
Ms. Karen Brady


Resource Recovery, LLC

Headwaters Charitable Trust

Ed Abel
Ed Kosa
Page 3
November 17, 2004

It is the understanding of the Headwaters Trust and Resource Recovery, LLC that these provisions will facilitate the receipt and expenditure of various grants funded through the Pennsylvania Department of Transportation or other agencies which would be used to repair and improve right of way structures, including the Peale Tunnel. These repairs and improvements are necessary in order to make the right of way safe for recreational trail purposes and to ensure its continued preservation and maintenance in accordance with the obligations assumed by the Headwaters Trust under the Notice of Interim Trail Use.

It is the understanding of Resource Recovery, LLC and the Headwaters Charitable Trust that this letter will provide the basis upon which the parties will enter into specific agreements to effectuate the understanding set forth herein. In the meantime, the parties may use this Letter of Understanding to inform governmental agencies, private groups and the public regarding future disposition and use of the Snow Shoe line and the alternative recreational trail facilities that will be made available to Headwaters Charitable Trust in the event the 9.3 mile section of the Snow Shoe line is reconverted to railroad use.

To indicate your agreement with this Letter of Understanding, please execute this letter on the signature lines provided below.

Very truly yours,

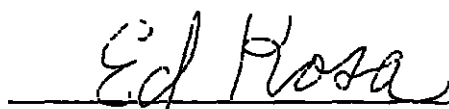
RICHARD R. WILSON, P.C.



Richard R. Wilson, Esq.
Attorney for Resource Recovery, LLC

RRW/bab
cc Jake Meyer, Esq.
Ms. Karen Brady

Resource Recovery, LLC



Headwaters Charitable Trust

COOPERATION AGREEMENT

This Cooperation Agreement (the "Agreement") is entered into by and between Resource Recovery, LLC ("RR") and the Headwaters Charitable Trust ("HCT")

Resource Recovery, LLC intends to construct a solid waste landfill, solid waste processing and recycling facilities, and associated infrastructure on a portion of a 5,758 acre parcel of land located in Rush Township and Snow Shoe Township, Centre County, PA., (the "Landfill"). RR desires to cooperate with and assist HCT in addressing natural resources concerns in HCT's eight-county area.

The Headwaters Charitable Trust believes that the Landfill can be developed and operated in a manner that will be protective of the regional and local environment and that a cooperative relationship with RR will significantly aid HCT in accomplishing its organizational and environmental goals.

The purpose of this Agreement is to set forth the understanding between RR and HCT with respect to RR's contribution of funds to HCT and the administration of those funds.

In consideration of the mutual promises of this Agreement, and intending to be legally bound, RR and HCT agree as follows:

- 1 **RR Contributions to HCT.** RR shall make the following contributions to HCT.
 - a. \$50,000 upon RR's receipt of all governmental permits and approvals necessary for the Landfill project
 - b. \$50,000 annually commencing in the first calendar year after issuance of all permits and approvals and continuing until the beginning of the first full calendar year of Landfill operations.
 - c. \$190,000 annually for the operational life of the Landfill commencing in the first full calendar year of operation of the Landfill. That amount will be increased by \$50,000 in each of the succeeding four years until the annual contribution reaches \$300,000 with the commencement of the fifth full year of Landfill operations. Thereafter the annual contribution will increase at the rate of inflation calculated by the percentage change in the Consumer Price Index from that of the previous twelve month period. The Consumer Price Index - All Urban Consumers using the U.S. city average of all items with a base period of 1982-1984 = 100 as compiled by the U.S. Department of Labor, Bureau of Labor Statistics will be the specific index referenced. The latest published information available on each applicable January 1st will be used in the percentage change calculation.
 - d. With the exception of 1 a. above, the funds will be paid to the Trust on a quarterly basis, with 25% of the amount of the annual contribution paid on or before the fifteenth day of January, April, July, and October.
- 2 **HCT Use of Funds.** HCT may utilize the funds contributed by RR for any purpose that (i) addresses natural resources concerns within HCT's eight-county area, and (ii) is consistent with HCT's 501(c)(3) status, with the following restriction:

- a. At least fifty percent (50%) of the funds contributed by RR shall be directly utilized to fund the Moshannon Creek Watershed Coalition ("MCWC") in accomplishing its goals of correcting or mitigating the harmful effects of acid mine drainage and restoring the Moshannon Creek watershed to sustainable fisheries, so long as MCWC
 - i. Maintains 501(c)(3) tax exempt status,
 - ii. Fulfills all of its obligations as set forth in a Cooperation Agreement between MCWC and RR, and
 - iii. Complies with all reasonable administrative and technical requirements of the Headwaters Charitable Trust.
3. **HCT Eligibility.** In order to remain eligible to receive the funding described above HCT shall, throughout the term of this Agreement:
 - a. Maintain 501(c)(3) tax exempt status,
 - b. Support the permitting, construction and operation of the Landfill as described in paragraph 4 below.
 - c. Make best efforts to leverage the funding provided under this Agreement by applying for matching grants from other sources,
 - d. Submit an annual report to RR describing all of the activities financed in whole or in part by RR funds during the prior year, and a description of the benefits that have or will accrue to the regional and local environment as a result of those activities financed by RR.
4. **HCT Support.** HCT agrees that in consideration of this Agreement and payment received under this Agreement, HCT shall actively support the permitting (including all future permit renewals, re-issuances, modifications, and the like), construction and operation of the Landfill. Such support shall include:
 - a. At such time as requested by RR, and in such form as reasonably requested by RR, HCT shall submit to the approval and permitting agencies a letter, or letters, with supporting documentation describing the benefits that will accrue to HCT, to the environment, and to regional communities from the various watershed and recreational improvement projects that will ensue from the funding and support provided by RR under this Agreement.
 - b. To the extent reasonably requested by RR, HCT shall provide testimony at public meetings and hearings in support of the Landfill and the benefits that will accrue pursuant to this Agreement.
 - c. In any advertising or public relations documents that HCT prepares for any project or activity funded in full or in part by any of the funds provided to HCT under this Agreement, HCT shall include a notation crediting RR as a supporting organization
5. **Term of Agreement.** This Agreement shall become effective immediately upon the execution by both parties and shall remain in effect until RR abandons the Landfill project prior to the acceptance of waste, or permanently closes the Landfill to acceptance of waste after operation begins.
6. **Assignment; Amendment.** Neither party may transfer or assign its obligations under this Agreement without the prior written approval of the other party. This

Agreement shall not be amended or modified except by a written instrument signed on behalf of HCT and RR.

7. **Mutual Obligations.** Each Party's obligations under this Agreement are based upon performance by the other party of its respective obligations. In the event of any failure to perform, the non-performing party shall be given written notice of the failure and a reasonable period to cure the non-performance. The obligations under this Agreement shall be specifically enforceable. In addition, the non-performing party shall be liable to the other party for damages caused by its failure to perform, and for all costs and expenses incurred by the other party as a result of such failure, and to enforce this Agreement.
8. **RR Right to Terminate.** In the event HCT, or any officer or Director of HCT, opposes or contests the issuance of permits (of the renewal, re-issuance, or modification of any permit) or governmental approvals for the construction or operation of the Landfill RR may immediately terminate this Agreement.
9. **Governing Laws; Dispute Resolution.** This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania. Any controversy, claim or dispute between the parties arising out of or relating to this Agreement or any related agreement or any breach hereof or thereof shall be referred to final and binding resolution by RR's and HCT's senior executives who have authority to reach agreement on any matters in dispute upon written request by either party specifying in reasonable detail the nature of the dispute. In the event that the parties' senior executives are unable to resolve the dispute within thirty (30) days after the initial request for dispute resolution, the dispute shall be settled by final and binding arbitration before a sole arbitrator located in Hamsburg, Pennsylvania, pursuant to the then-current commercial rules of the American Arbitration Association and the federal substantive and procedural law of arbitration. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator will not have the power to award punitive or exemplary damages or any damages excluded by, or in excess of, any damage limitations expressed in this Agreement. Each party will bear its own attorneys' fees and costs related to the arbitration. Unless otherwise determined by the arbitrator, the costs and expenses of the arbitration shall be borne equally by the parties.
10. **Further Actions, Documents.** HCT and RR agree to take such actions, and to execute and deliver any further documents or instruments which are not inconsistent with the provisions of this Agreement and which are necessary or appropriate to fulfill all obligations and effect all transactions contemplated by this Agreement.
11. **Invalid Terms.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
12. **Notices.** Any notices or communications pursuant to this Agreement shall be in writing and delivered as follows:

If to RR.

Resource Recovery, LLC
P.O. Box 525
3925 Columbia Avenue
Mountville, PA 17554-0525

If to HCT. Pending

13. **Entire Agreement.** This Agreement sets forth the entire agreement between HCT and RR and supersedes any prior verbal agreements or understandings of the parties with respect to the subject matter of the Agreement.

The parties have caused this Agreement to be executed this _____ day of _____, 2005

Resource Recovery, LLC .

By _____

Headwaters Charitable Trust

By. _____

COOPERATION AGREEMENT

This Cooperation Agreement (the "Agreement") is entered into by and between Resource Recovery, LLC ("RR") and the Moshannon Creek Watershed Coalition ("MCWC").

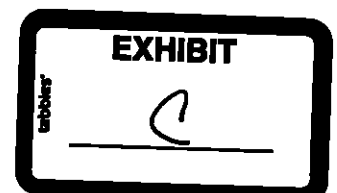
Resource Recovery, LLC intends to construct a solid waste landfill, solid waste processing and recycling facilities, and associated infrastructure on a portion of a 5,758+- acre parcel of land located in Rush Township and Snow Shoe Township, Centre County, PA., (the "Landfill"). The entire Landfill is located within the Moshannon Creek watershed. As an integral element of the Landfill, RR will reclaim some abandoned mine lands and reduce or eliminate acid mine drainage from the RR property. Additionally, RR desires to cooperate with and assist MCWC in fulfilling its mission to improve and protect the quality and beauty of the Moshannon Creek and to enhance life in the Moshannon Creek Watershed.

Moshannon Creek Watershed Coalition believes that the Landfill can be developed in a manner that will improve the quality of the Moshannon Creek and that a cooperative relationship with RR will significantly aid MCWC in accomplishing its goal of correcting the harmful effects of acid mine drainage and restoring the entire Moshannon Creek watershed to sustainable fisheries.

The purpose of this Agreement is to set forth the understanding between RR and MCWC with respect to the implementation of various projects and cooperation with each other as described below.

In consideration of the mutual promises of this Agreement, and intending to be legally bound, RR and MCWC agree as follows:

1. **RR Contribution of Funds.** RR shall provide MCWC with the following funding to support MCWC's mission to improve and protect the quality and beauty of the Moshannon Creek and to enhance life in the Moshannon Creek Watershed.
 - a. \$2,000 upon execution of this agreement. There will be no restrictions upon how these monies may be expended by MCWC.
 - b. \$50,000 upon RR's receipt of all governmental permits and approvals necessary for the Landfill project.
 - c. \$50,000 annually commencing in the first calendar year after issuance of all permits and approvals and continuing until the beginning of the first full calendar year of Landfill operations.
 - d. \$75,000 annually for the operational life of the Landfill commencing in the first full calendar year of operation of the Landfill. That amount will be increased by \$25,000 in each of the succeeding three years until the annual contribution reaches \$150,000 with the commencement of the fourth full year of Landfill operations. Thereafter the annual contribution will increase at the rate of inflation calculated by the percentage change in the Consumer Price Index from that of the previous twelve month period. The Consumer Price Index - All Urban Consumers using the U.S. city average of all items with a base period of 1982-1984 = 100 as compiled by the U.S. Department of Labor, Bureau of Labor Statistics will be the specific index referenced. The latest published information available on each applicable January 1st will be used in the percentage change calculation.



- e. With the exception of 1 a above, the funds will be paid to MCWC on a quarterly basis, with 25% of the amount of the annual contribution paid on or before the fifteenth day of January, April, July, and October.

2. MCWC's Use of Funds.

- a. MCWC shall use RR funds to perform a catalogue of discharges within the Moshannon Creek watershed and each sub-watershed as described in attachment A to this Agreement.
- b. Upon completion of the watershed catalogue, MCWC shall prepare a restoration plan and schedule for individual remediation projects that are necessary and appropriate for correcting the harmful effects of acid mine drainage and restoring the entire Moshannon Creek watershed to sustainable fisheries, and shall submit that restoration plan to RR. MCWC shall utilize the continuing flow of funds as set forth in paragraph 1 above to implement those additional projects.
- c. No more than five percent (5%) of the funds contributed by RR shall be utilized for MCWC administrative expenses
- d. The scope of work may be changed at any time upon written consent of both parties.

3. MCWC Eligibility.

- a. In order to remain eligible to receive the funding described above MCWC shall, throughout the term of this Agreement:
 - i. Maintain 501(c)(3) tax exempt status,
 - ii. Support the permitting, construction and operation of the Landfill as described in paragraph 4 below.
 - iii. Make best efforts to leverage the funding provided under this Agreement by applying for matching grants from other sources, and
 - iv. Submit an annual report to RR describing all of the activities financed in whole or in part by RR funds during the prior year, and a description of the benefits that have or will accrue to the Moshannon Creek, its tributaries, and the watershed as a result of those activities financed by RR.
- b. In the event MCWC loses their eligibility to receive funding under this Agreement, RR shall make best efforts to select and fund another organization of RR's choice for the purpose of continuing the funding for the watershed improvements efforts which are contemplated by this Agreement.

4. MCWC Support. MCWC agrees that in consideration of this Agreement and payment received under this Agreement, MCWC shall actively support the permitting, construction and operation of the Trewar Landfill. Such support shall include:

- a. At such time as requested by RR, and in such form as reasonably requested by RR, MCWC shall submit to the approval and permitting agencies a letter, or letters, with supporting documentation describing the benefits that will accrue to MCWC and to the environment from the various watershed improvement projects that will ensue from the funding and support provided to MCWC by RR under this Agreement.
- b. To the extent reasonably requested by RR, and to the extent members of MCWC are available, MCWC shall provide testimony at public meetings and hearings in

support of the Landfill and the benefits that will accrue to the Moshannon Creek watershed pursuant to this Agreement

- c. In any advertising or public relations documents that MCWC prepares for any project or activity funded in full or in part by any of the funds provided to MCWC under this Agreement, MCWC shall include a notation crediting RR as a supporting organization.

5. Term of Agreement. This Agreement shall become effective immediately upon the execution by both parties and shall remain in effect until the earlier of:

- a. The date when RR abandons the Landfill project prior to the acceptance of waste,
- b. the date when RR permanently closes the Landfill to acceptance of waste after operation begins,
- c. the date when this Agreement is terminated pursuant to paragraph 8 below, or
- d. December 31, 2050

6. Assignment; Amendment. Neither party may transfer or assign its obligations under this Agreement without the prior written approval of the other party. This Agreement shall not be amended or modified except by a written instrument signed on behalf of MCWC and RR. In the event RR sells the Landfill, this Agreement shall be binding upon the new Landfill owner.

7. Mutual Obligations. Each Party's obligations under this Agreement are based upon performance by the other party of its respective obligations. In the event of any failure to perform, the non-performing party shall be given written notice of the failure and a reasonable period to cure the non-performance. The obligations under this Agreement shall be specifically enforceable. In addition, the non-performing party shall be liable to the other party for damages caused by its failure to perform, and for all costs and expenses incurred by the other party as a result of such failure, and to enforce this Agreement.

8. Right to Terminate.

- a. RR may terminate this Agreement
 - i. If MCWC, or any officer or director of MCWC, opposes or contests the issuance of permits (or the renewal, re-issuance, or modification of any permit) or governmental approvals for the construction or operation of the Landfill and MCWC does not promptly and publicly repudiate such opposition, or
 - ii. If MCWC fails to perform any of its obligations under this Agreement if such non-performance is not cured within 30 days after written notice is given by RR
- b. MCWC may terminate this Agreement at any time by providing written notice of termination to RR

9. Governing Laws; Dispute Resolution. This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania. Any controversy, claim or dispute between the parties arising out of or relating to this Agreement or any related agreement or any breach hereof or thereof shall be referred to final and binding resolution

by RR's and MCWC's senior executives who have authority to reach agreement on any matters in dispute upon written request by either party specifying in reasonable detail the nature of the dispute. In the event that the parties' senior executives are unable to resolve the dispute within thirty (30) days after the initial request for dispute resolution, the dispute shall be settled by final and binding arbitration before a sole arbitrator located in State College, Pennsylvania, pursuant to the then-current commercial rules of the American Arbitration Association and the federal substantive and procedural law of arbitration. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator will not have the power to award punitive or exemplary damages or any damages excluded by, or in excess of, any damage limitations expressed in this Agreement. Unless otherwise determined by the arbitrator, each party will bear its own attorneys' fees and costs related to the arbitration.

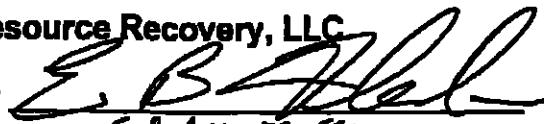
- 10 **Further Actions, Documents.** MCWC and RR agree to take such actions, and to execute and deliver any further documents or instruments which are not inconsistent with the provisions of this Agreement and which are necessary or appropriate to fulfill all obligations and effect all transactions contemplated by this Agreement
- 11 **Invalid Terms.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction
12. **Notices.** Any notices or communications pursuant to this Agreement shall be in writing and delivered to the following addresses
- | | |
|------------|--|
| If to RR | Resource Recovery, LLC
P O Box 525
3925 Columbia Avenue
Mountville, PA 17554-0525 |
| If to MCWC | PO Box 94
Hawk Run, PA 16840 |

13. Entire Agreement. This Agreement sets forth the entire understanding between MCWC and RR with respect to the subject matter of this Agreement and supersedes and replaces all prior agreements, arrangements, representations, letters of intent and memoranda of understanding of the parties with respect to the subject matter of the Agreement.

The parties have caused this Agreement to be executed this 18TH day of APRIL, 2005.

Resource Recovery, LLC

By

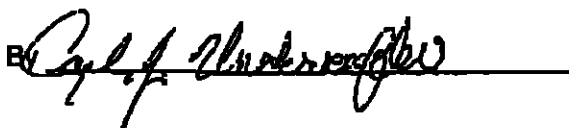

E. A. ABEL, JR., CEO

Moshannon Creek Watershed Coalition

By



By



Attachment A: Scope of Work

MCWC agrees to use monies provided by RR to first complete a discharge catalogue of the entire watershed and then to use the results of this and other efforts to create a strategic plan for assessing and remediating portions of the watershed. Monies expended after those used on the initial catalogue will be leveraged as best as possible with other sources of monies

Timeline

Starting in the spring immediately following the first \$50,000 payment from RR:

Milestone 1. Month 1, Spring, Year 1

- Establish database for background information
- Begin training for field reconnaissance
- Develop field sheets for reconnaissance

Milestone 2: Spring – Fall, Year 1

- Begin stream reconnaissance
- Begin field data compilation
- Begin data analysis for development of sampling plan and strategy document
- Compile background information

Milestone 3: Winter, Year 1

- Begin development of Moshannon Creek sampling plan and high level restoration strategy document
- Prioritize sampling points and discharges
- *Possibly* submit grant requests for one or more subwatershed assessments based upon research completed to date
- *Possibly* submit grant requests for Phase II and Phase III of overall restoration plan
- Develop public awareness strategies

Milestone 4. Spring, Year 2

- Complete stream reconnaissance
- Complete data compilation

Milestone 5 Summer, Year 2

- Complete strategy document for restoring Moshannon Creek
- Submission of final document to RR
- Copy and distribute final document elsewhere as is appropriate

The strategy document submitted at the end of the watershed catalogue will provide for the steps that the group will intend to take in subsequent years. The document will include results of the research completed in the watershed catalogue, data gathered during the creation of the watershed clearinghouse, and data gathered during assessments completed in the watershed by the time that the document is drafted

While the strategy document will outline a strategy for restoring the watershed, it will not include a timeline for future activities. Rather, it will include a suggested ordering of activities and a prioritization of actions. A timeline will not be included due to the dependence upon grant agencies for funding.

The strategy document will be a working document which will change as new information becomes available, but it will serve as the driving plan for subsequent restoration work in the watershed. Activities included in this plan of attack which may be funded by RR monies are listed below

- Subwatershed assessments which will include the drafting of a restoration plan for the assessed subwatershed
- Design of treatment systems
- Permitting of treatment systems
- Construction of treatment systems
- Operation and maintenance of treatment systems
- Stream bank restoration
- Natural Stream Design projects
- Highwall reclamation
- Refuse pile relocation

These headings represent all necessary associated acts which are typically required to complete the stated activities (such as surveying, map creation, and printing and reproduction)

Treatment systems may be any type of AMD treatment which is considered proven technology. These may be passive systems such as vertical flow wetlands or active treatment systems such as those using of caustic soda. As new treatment options become accepted, they may be included in MCWC's arsenal for restoring Moshannon Creek.

Items not expressly listed above will not be funded by RR monies unless written approval is obtained from RR for adding these activities to the list of approved activities



December 17, 2007

Mr Ed Kosa, Chairman
Headwaters Charitable Trust
47 Jeffers Street
DuBois, PA 15801

Mr. Jake Meyer, Esq.
Meyer & Wagner
115 Lafayette Street
St. Marys, PA 15857

RE Snow Shoe Industrial Track

Dear Gentlemen

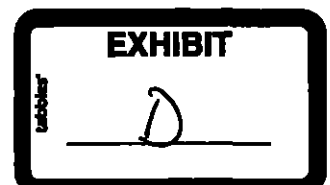
As you may recall, in 2005 Resource Recovery, LLC sought to negotiate various agreements required by the November 17, 2004 letter of understanding between Resource Recovery, LLC and Headwaters Charitable Trust. However, Headwaters Charitable Trust was unwilling to conclude those negotiations and the arrangements proposed in the letter of understanding have not been implemented. Given the passage of time and in absence of any further negotiations with Headwaters Charitable Trust, we wish to advise you that Resource Recovery, LLC will not undertake the arrangements proposed in the letter of understanding, and any previous understandings between Resource Recovery LLC and Headwaters Charitable Trust are hereby null and void.

Very Truly Yours,

RESOURCE RECOVERY, LLC

E B ABEL, JR
President

bcc Richard Wilson



RICHARD R. WILSON, P.C.

Attorney at Law

A Professional Corporation

127 Lexington Avenue, Suite 100

Altoona, PA 16601

(814) 944-5302

888-454-3817 (Toll Free)

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rrwilson@atlanticbbn.net - Email

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Of Counsel to

Vuono & Gray LLC

2310 Grant Building

Pittsburgh, PA 15219

(412) 471-1800

(412) 471-4477 FAX

851 Twelfth Street
Oakmont, PA 15139

September 23, 2008

Templeton Smith Jr., Esq
Thomson, Rhoades & Cowie, PC
2 Chattam Center
112 Washington Place, 10th Floor
Pittsburgh, PA 15219-3499

Re Headwaters Charitable Trust

Dear Attorney Smith

Before scheduling a meeting with the parties in interest, it may be useful to identify the objectives of the various parties in connection with proposed discussions. I have conferred with Resource Recovery, LLC and with Attorney Ron Lane of who represents R J Corman Railroad Company in this regard. We have determined that any agreement with Headwaters Charitable Trust must include the following commitments:

1 Headwaters Charitable Trust shall not oppose the R J Corman/Pennsylvania Lines STB proceedings and shall fully cooperate with the restoration of rail service on the eastern segment between M P 64.5 near Winburne to M P 45.5 at Gorton, including the relinquishment of all recreational trail use of that portion of the former Conrail right of way, and acknowledgment of RJ Corman Railroad Company's statutory right of reentry for railroad purposes, pursuant to the National Trail Systems Act.

2 Headwaters Charitable Trust shall advise the STB and the Pennsylvania Department of Conservation and Natural Resources in writing that it has no objection to the RJ Corman/Pennsylvania Lines restoration of rail service on the eastern segment and shall request the Department of Conservation and Natural Resources to withdraw its opposition in the RJ Corman/Pennsylvania Lines STB proceeding.

3 Headwaters Charitable Trust shall terminate any rights of the Snow Shoe Rails to Trails Association to use the eastern segment effective at the time of STB approval of the construction, and shall request SSRTA not to oppose the R J Corman/Pennsylvania Lines STB proceeding.

EXHIBIT

E

Templeton Smith, Jr , Esq
September 23, 2008
Page 2

4 Headwaters Charitable Trust shall agree that the western terminus of the Snow Shoe Trail shall be at a trail head to be located on the eastern side of Gorton Road at or about M P 45 4

5 Headwaters Charitable Trust shall fully cooperate with the restoration of rail service between Wallaceton and Gorton, and will refrain from instituting, instigating or supporting any legal, political or other attempt to prevent restoration of such rail service

Please understand that Resource Recovery, LLC is one of several potential shippers which will utilize the proposed rail line , but R J Corman Railroad Company/Pennsylvania Lines is acquiring the right of way Thus the railroad's participation will be required with respect to any agreement with Headwaters Charitable Trust

Once you have had an opportunity to confer with your client regarding these matters, please advise whether we can pursue further discussions between the parties

Very truly yours,

RICHARD R WILSON, P C

A handwritten signature in black ink, appearing to read "Richard R. Wilson", followed by a horizontal line.

Richard R. Wilson, Esq
Attorney for Resource Recovery, LLC

RRW/bab
xc Ronald A Lane, Esq

THOMSON, RHODES & COWIE, P. C.

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Richard E. Rush
Lanton L. Moyer
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Thomas D. Thomson (1925-1999)

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Christian W. Wrabley*
Jeffrey R. Bailey

* Also Admitted in West Virginia
* Also Admitted in Illinois
† Also Admitted in New Jersey
and Washington

October 7, 2008

In Re. R. J. Corman Rail Line Reactivation Our File No. 15598

Richard R. Wilson, Esquire (via US mail and email rrwilson@atlanticbbn.net)
Richard R. Wilson, P. C.
127 Lexington Avenue, Suite 100
Altoona, PA 16601

Dear Mr. Wilson.

I am writing in response to your letter of September 23, 2008 and to set forth the objectives of my client in connection with our proposed discussion. I will begin by addressing the numbered paragraphs in your letter in the order in which they appear.

Assuming that Resource Recovery, LLC and R. J. Corman/Pennsylvania Lines agree to the commitments set forth later in this letter, Headwaters Charitable Trust will be willing to agree

1 Not to oppose the R. J. Corman/Pennsylvania Lines STB proceedings and to fully co-operate with the restoration of rail service on the eastern segment of the Snow Shoe Trail, between M P 64.5 near Winburne and M P 45.5 at Gorton, as set forth in paragraph 1 of your letter.

2 To advise the STB and the Pennsylvania Department of Conservation and Natural Resources in writing that it will not be making any objection to the R. J. Corman/Pennsylvania Lines restoration of rail service on the eastern segment of the Snow Shoe Trail and that Resource Recovery LLC and R. J. Corman have satisfactorily responded to all of the Trust's concerns regarding the railroad's taking of a section of its recreational trail.

3 To terminate any rights of the Snow Shoe Rails to Trails Association to use the aforesaid eastern segment effective as of the date of STB approval of the restoration of railroad service on the said segment and to make available to the said association any new trail constructed as a replacement for the section taken by the railroad.

4 That, effective as of the date of STB approval of the restoration of railroad service on the eastern segment of the Snow Shoe Trail, the western terminus of the Snow Shoe Trail shall be at a trail head to be located on the eastern side of Gorton Road at or about M P 45.4



5 To cooperate with the restoration of rail service between Wallaceton and Gorton, and to refrain from instituting, instigating or supporting any legal, political or other attempt to prevent restoration of such rail service

As a prerequisite to its agreement to the above items, Headwaters Charitable Trust will require the following commitments from Resource Recovery, LLC and/or R. J. Corman Railroad Company/Pennsylvania

1 An agreement, upon obtaining approval for the restoration of rail service on the eastern portion of the Snow Shoe Trail, to repay the \$555,195.00 grant used to repair the Peale Tunnel, which grant was obtained by Headwaters in reliance on Resource Recovery's letter of agreement dated November 17, 2004

2 An agreement, upon obtaining approval for the restoration of rail service on the eastern portion of the Snow Shoe Trail, to provide, or provide funding for, an alternative trail of approximately 10 miles in length connecting to the existing Snow Shoe Trail at the Gorton trail head

3. An agreement, upon obtaining approval for the restoration of rail service on the eastern portion of the Snow Shoe Trail, to repay other monies invested by Headwaters in the improvement and maintenance of the portion of the Snow Shoe Trail being converted to rail use

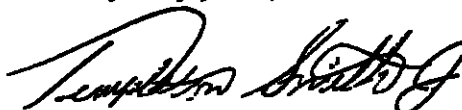
4 Support of applications by Headwaters Charitable Trust to obtain private or public grants for an engineering and safety study and report regarding the viaduct over Moshannon Creek, along with safety improvements to such viaduct, and indemnification of the Trust for the cost of such reports at the time approval is obtained for the restoration of rail service on the eastern portion of the Snow Shoe Trail in the event that the Trust has been unsuccessful in obtaining a grant or grants to cover such cost

5 Support of any grant applications made by Headwaters Charitable Trust for maintenance of the eastern portion of the Snow Shoe Trail between the date of agreement and the date of approval of the restoration of rail service on such portion of the trail (This requirement is necessitated by the fact that the pending application for restoration of rail service has virtually precluded the Trust from obtaining maintenance grants that it would otherwise have been able to obtain)

..

If your clients are interested in meeting to discuss the commitments sought by the parties, as set forth above, please contact me so that we can arrange for a mutually convenient date and place to meet. I look forward to the amicable resolution of this matter.

Very truly yours,



Templeton Smith, Jr.

TS/bjk

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within STATEMENT OF HEADWATERS CHARITABLE TRUST has been served by first-class, U.S. mail, on this 25th day of November, 2008, on the following counsel of record

**Kathryn H S Pett
Ballard Spahr Andrews & Ingersoll, LLP
One Utah Center, Suite 800
201 South Main Street
Salt Lake City, UT 84111-2221**

**Ronald A Lane, Esquire
Thomas Litwiler, Esquire
Myles Tobin, Esquire
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 920
Chicago, IL 60606-2832**

**Kimberly A Hummel, Chief Counsel
Department of Conservation and Natural Resources
Rachel Carson State Office Building, 7th Floor
400 Market Street
P O Box 8767
Harrisburg, PA 17105**

**Richard R Wilson, Esquire
Richard R Wilson, P C
127 Lexington Avenue, Suite 100
Altoona, PA 16601**

A handwritten signature in black ink, appearing to read "Richard R. Wilson", is written over a horizontal line.